

In the Matter of Merchant Mariner's Document No. Z-259959 and all
other Seaman Documents
Issued to: CHARLES O. GREGORY

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1354

CHARLES O. GREGORY

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 8 December 1959, an Examiner of the United States Coast Guard at Galveston, Texas, suspended Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as an Oiler on board the United States SS AMOCO MAINE under authority of the document above described, on 27 November 1958, Appellant assaulted and battered the Chief Cook of the SS AMOCO MAINE by striking him with a fork. Two other specifications, to wit: that Appellant assaulted and battered the same crew member by kicking him, and that Appellant assaulted the said crew member by attempting to strike him, were found not proved.

At the hearing, Appellant voluntarily elected to act as his own counsel. Appellant entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence a certified copy of the Shipping Articles, extracts from the Official Logbook, and the testimony of several witnesses, including the Chief Cook, taken by written interrogatories.

In defense, Appellant offered in evidence his testimony and that of other crew members who did not witness the incident.

At the end of the hearing, the Examiner rendered the decision in which he concluded that the charge and first specification had been proved. The Examiner then entered an order suspending all documents issued to Appellant for a period of 12 months outright and 6 months on 18 months' probation. This order included a previous probationary suspension violated by proof of the instant offense. The latter order, imposed in February 1958, was 6 months' suspension on 12 months' probation for several infractions of discipline.

FINDINGS OF FACT

On 27 November 1958, Appellant was serving as an Oiler on board the United States SS AMOCO MAINE and acting under authority of his document while the ship was in a domestic port. Appellant was served turkey for supper and, considering it not enough, asked for more. When he was turned down, Appellant went to the galley and took more turkey. The Chief Cook objected to this and there followed an exchange of words and pushing. The end result was that Appellant stabbed the Chief Cook on the temple with a table fork and he fell bleeding to the deck. Following this incident, Appellant was discharged from the ship and the Chief Cook was taken to a hospital. The head wounds from the fork required six stitches.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that since the witnesses contradicted each other the Government has failed to carry its burden of proof.

OPINION

Appellant is charged with having committed assault and battery on the Chief Cook with a fork. The record in this case indicates that Appellant admitted striking the Chief Cook, but the contention is that it was not with a fork but with his fist. For purpose of sustaining a conviction of assault and battery it is immaterial whether Appellant struck the Chief Cook with his fist or jabbed him with a fork. The record is clear that the physical contact made by Appellant with the Chief Cook was willful and unauthorized and thus satisfied all the necessary elements required to sustain a conviction for assault and battery. See 6 CJS §§ 1 et. seq. Furthermore, three witnesses, who were present in the mess hall at the time of the incident, unequivocally testified that the injury was inflicted with a fork. Two of these witnesses specifically stated that Appellant "stabbed" the Chief Cook with a fork. The other witness did not specify the manner in which Appellant "hit" the Chief Cook with a fork. Since this direct evidence was not discredited, it constituted substantial evidence that Appellant stabbed the Chief Cook with a fork. When asked by the Investigating Officer whether the fork was in his hand, Appellant testified that he did not remember. Since Appellant could not show that he did not have the fork in the hand with which he struck his adversary, and in view of the fact that Appellant failed to impeach the testimony of the three eyewitnesses, it is clear that the Hearing Examiner did not err in finding the charge and specification as proven. Therefore, I find that the Government has

met its burden of proof.

ORDER

The order of the Examiner dated at Galveston, Texas, 8 December 1959, is AFFIRMED.

E. J. Roland
Admiral, United States Coast Guard
Commandant

Signed at Washington, D. C., this 21st day of November 1962.